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No. 83-346

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

ESMAIL YERMIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether, in a prosecution for making a false statement in violation of 18 U.S.C. 1001, the government must prove that the defendant knew that the statement was made "in [a] matter within the jurisdiction of [a] department or agency of the United States."

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 708 F.2d 365.

JURISDICTION

The judgment of the court of appeals was entered on April 19, 1983. A timely petition for rehearing was denied on July 5, 1983 (Pet. App. 16a). The petition for a writ of certiorari was filed on August 31, 1983, and was granted on November 28, 1983 (J.A. 51). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 1001 provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Following a jury trial in the United States District Court for the Central District of California, respondent was convicted on three counts of making a false statement in a matter within the jurisdiction of a federal agency, in violation of 18 U.S.C. 1001. He was sentenced to concurrent terms of five years' imprisonment on each count, the first six months to be served, and the balance suspended in favor of a term of five years' probation. The court of appeals reversed (Pet. App. 1a-15a).

1. The evidence at trial showed (see Pet. App. 2a) that in 1979 respondent was hired as an engineer by Gulton Industries, a defense contractor. It was necessary for respondent to obtain a Department of Defense security clearance, since he was to have access to classified material in the course of his employment. Gulton's security officer therefore asked respondent to fill out a "Department of Defense Work Sheet for Preparation of Personnel Security Questionnaire" (*ibid.*; J.A. 5-7)

In response to a question on the work sheet asking whether he had ever been charged with any violation of law, respondent failed to disclose that in 1978 he had been convicted of mail fraud, in violation of 18 U.S.C. 1341. In describing his employment history, respondent falsely stated that he had been employed by Bell Helicopter, International, of Houston, Texas, and Square D Corporation of Los Angeles, California (J.A. 6-7, 9-10, 13, 26-28). The Gulton security officer typed the information provided by respondent onto another document captioned "Department of Defense Personnel Security Questionnaire." Respondent reviewed that document for errors and signed a certification stating that his "answers [were] true, complete, and correct to the best of [his] knowledge and belief, and [were] made in good faith" and that he knew "that any misrepresentation or false statement * * * may subject [him] to prosecution under Section 1001 of the United States Criminal Code * * *" (J.A. 38). The form respondent signed bore the following warning directly above the signature block (J.A. 7-9, 38):

> NOTE: PENALTY FOR MISREPRESENTATION—Failure to answer all questions, or any misrepresentation (by omission or concealment, or by misleading, false, or partial answer) may serve as a basis for denial of clearance for access to classified Department of Defense information. In addition, Title 18, United States Code 1001, makes it a criminal offense, punishable by a maximum of 5 years imprisonment, $10,000 fine, or both, knowingly and willfully to make a false statement or representation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States.

> This includes any statement knowingly and willfully made by employer or employee herein which is knowingly incorrect, incomplete or misleading in any important particular * * *.

After witnessing respondent's signature, the Gulton security officer mailed the completed form to the Defense Industrial Security Clearance Office for processing (J.A. 8-9). Government investigators subsequently discovered that the information respondent had furnished was false, and he was denied a security clearance. When told of the discovery, respondent acknowledged that the information he had provided was false (Pet. App. 2a; J.A. 16-17).

At trial, respondent admitted that he had responded falsely to questions on the security questionnaire concerning his criminal record and employment history (J.A. 1-12). He explained that he had made the false statements so that the information on the security questionnaire would be consistent with similar fabrications he had included on his employment application (J.A. 13). Respondent testified that he believed the information on the form would be used by Gulton only for classification of its employees and that he was unaware that the information was to be transmitted to the Department of Defense or to any other government agency (J.A. 13-14).[1] Respondent asserted that he had not read the form carefully when he signed it and thus did not notice either the words "Department of Defense" on the first page or the warning printed above the signature block (J.A. 15-16).

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[1] Respondent testified that he did not believe Gulton "would have either the resources or the inclination" to verify the data he had furnished (J.A. 17).

Prior to trial, respondent submitted a proposed jury instruction stating, inter alia, that a statement is fraudulent "if known to be untrue, and made or caused to be made with the intent to deceive the Government agency to whom submitted" (J.A. 50). The trial court rejected that proposal and instead instructed the jury that the intent element of Section 1001 requires a finding that respondent "did * * * [the] act or acts [charged] with knowledge * * * that the writing or document was false or fictitious" and that he "knew or should have known that the information was to be submitted to a government agency" (J.A. 25). Respondent objected to the instruction, contending that only actual knowledge that a statement is being made to an agency of the United States satisfies the intent element of Section 1001 (Tr. 84, 115).

On appeal, respondent again did not dispute that he had made false statements on the security questionnaire, but claimed only that he did not know the questionnaire would be sent to the government for purposes of a security clearance. Respondent contended that the trial court erred in failing to instruct the jury that it was required to find that he had actual knowledge that the statements were made in a matter within the jurisdiction of a federal agency (Pet. App. 3a).

2. The court of appeals reversed respondent's convictions (Pet. App. 1a-15a). The court held that in a prosecution under Section 1001 the government must prove beyond a reasonable doubt that the defendant knew at the time he made the false statement that it was made in a matter within the jurisdiction of a federal agency. The court recognized (Pet. App. 5a-6a) that its holding conflicted with decisions of the Fifth,

Sixth and Seventh Circuits.[2] In addition, it acknowledged that its construction of the intent requirement of Section 1001 is not mandated by the language of the statute, which it characterized as "ambiguous" (Pet. App. 6a).[3] However, the court concluded that the legislative history of Section 1001 and its predecessors, although "not entirely conclusive" (Pet. App. 7a), suggests that Congress intended that knowledge of the facts giving rise to federal jurisdiction be an element of the offense.

The court observed (Pet. App. 8a) that an earlier version of Section 1001 expressly required proof of an intent to defraud the government. In 1934 Congress removed the reference to intent to defraud and added the requirement that a statement be made in a matter within the jurisdiction of a federal agency. The court cited various statements made during congressional consideration of the 1934 amendment, in which legis-

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[2] *United States* v. *Baker*, 626 F.2d 512, 516 (5th Cir. 1980); *United States* v. *Stanford*, 589 F.2d 285, 297 (7th Cir. 1978), cert. denied, 440 U.S. 983 (1979); *United States* v. *Lewis*, 587 F.2d 854, 857 (6th Cir. 1978) (per curiam). The court observed (Pet. App. 4a-5a) that in other cases courts have assumed, without deciding, that knowledge of federal involvement is an element of a violation of Section 1001, citing *United States* v. *Cella*, 568 F.2d 1266, 1288 (9th Cir. 1978); *United States* v. *Candella*, 487 F.2d 1223, 1226-1227 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974); and *Ebeling* v. *United States*, 248 F.2d 429, 434-435 (8th Cir.), cert. denied, 355 U.S. 907 (1957).

[3] The court of appeals believed (Pet. App. 6a-7a) that the placement and punctuation of the terms "knowingly and willfully" do not indicate whether those terms modify only the phrase "makes any false, fictitious, or fraudulent statements" or the broader phrase "in any matter within the jurisdiction of any department or agency of the United States * * * makes any false, fictitious, or fraudulent statements."

lators suggested examples of false statements that would be covered by the amendment (Pet. App. 10a-12a). Although the court acknowledged that many of the legislators' comments addressed versions of the legislation that ultimately were not enacted, it concluded that the comments nonetheless indicated that the legislators believed the 1934 amendment would apply to cases in which the maker of a statement would have known that it was made in a matter within the jurisdiction of a federal agency (*id.* at 12a).[4] The court concluded on the basis of this legislative history "that Congress intended that knowledge of federal involvement be an element of the crime" and that "the defendant's knowledge of federal involvement is entirely relevant to the proper effectuation of the Congressional goals * * *" (*id.* at 12a-13a).

The court of appeals rejected the government's alternative argument that any requirement of knowledge of federal involvement was satisfied by the objective "should have known" portion of the jury instruction. In the court's view, the instruction that respondent "knew or should have known that the information was to be submitted to the government" was insufficient because it allowed the jury to return a conviction even if it believed that respondent did not actually know that his statements were within federal agency jurisdiction. The court concluded that under the subjective standard of criminal knowledge used by the Ninth Circuit the jury was required to find—beyond a reasonable doubt—that respondent had

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[4] In particular, the court pointed to Congress's concern with the presentation to the Department of the Interior of false papers concerning "hot oil" and with the use of false wage certificates submitted for payment to the Public Works Administration (Pet. App. 12a).

actual knowledge of federal involvement. Pet. App. 14a-15a.

SUMMARY OF ARGUMENT

Congress provided in 18 U.S.C. 1001 that "[w]hoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes any false, fictitious or fraudulent statements or representations * * * shall be fined not more than $10,000 or imprisoned not more than five years, or both." The question presented by this case is whether, in a prosecution for violation of Section 1001, the government must prove that the defendant knew his false statement was made in a matter within federal agency jurisdiction. Three courts of appeals have held that such proof is not an element of the Section 1001 offense. The court of appeals in this case disagreed.

A. The language of Section 1001 makes clear that a statement must be in a matter within federal agency jurisdiction and that the defendant must know that the statement is false. Lacking from statutory text is any express requirement that the prosecution prove that the defendant knew of the facts supporting federal jurisdiction. Indeed, a natural reading of Section 1001 unambiguously suggests that there is no such requirement. The "in any matter" language is not phrased in a manner that would indicate that it forms a part of the statute's culpability requirement, and its placement at the beginning of the sentence effectively eliminates a reading under which it is modified by the words "knowingly and willfully," which follow. The court of appeals felt free to avoid the clear import of the statute as now worded because the wording was somewhat different prior to codification of Title 18 in 1948. But even as worded prior to

codification, the most natural reading of the statute is that knowledge of federal involvement is not an element of the offense.

B. The legislative purpose strongly supports the conclusion that Congress did not require knowledge of federal involvement as an element of the Section 1001 offense. Congress enacted Section 1001 in its present form in order "to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described." *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941). Requiring proof that a defendant knew his false statement was in a matter within federal agency jurisdiction would narrow significantly the scope of the protection provided by the statute for federal functions. In many cases, statements that are not made directly to a federal agency are elicited for the purpose of affecting government actions and are transmitted by their recipient to the federal government. For example, individuals submit applications to state, local, or private agencies in order to receive federal benefits or to secure federally funded contracts, or, as in this case, they submit information to a private defense contractor, which forwards it to the federal government for security clearance purposes. If such statements are false, they can cause serious harm to federal functions, quite without regard to whether, as in this case, the maker of the false statement claims he was unaware of any federal connection. The court of appeals' construction of Section 1001 will make it considerably more difficult to prosecute such false statements.

There is no mention in the legislative history of any requirement of knowledge of federal involvement. Instead, that history indicates that Congress wished to broaden the federal false statement statute to reach

a wide range of statements, including those that could interfere with the many New Deal programs that had recently begun. President Roosevelt refused to sign the first version of the new false statement legislation that Congress passed—a version that included both the "knowingly and willfully" language *and* a requirement of intent to defraud the United States—on the ground that it failed to reach any further than the existing, unsatisfactory statute and imposed lower penalties. Thereafter Congress eliminated the "intent to defraud the government" language—language that would have directly supported the court of appeals' holding here—and replaced it with the "in any matter" phrase that appears in the current Section 1001. That choice of broad language over more restrictive language that would have required an intent to deceive the government shows that Congress rejected a requirement of knowledge of federal involvement and thereby afforded comprehensive protection for federal functions. The excerpts from the legislative history cited by the court of appeals do not in any way contradict that conclusion.

C. Consideration of the purposes generally served by culpability criteria, on the one hand, and jurisdictional language, on the other, confirms our reading of Section 1001. The purpose of culpability requirements is to separate innocent conduct from blameworthy conduct. An individual who makes a statement he knows to be false is clearly engaged in blameworthy conduct and, in addition, runs the risk that he may incur criminal penalties under, *e.g.*, a state false pretenses statute. Thus, no additional requirement of knowledge of federal involvement is needed to avoid creation of a "snare for the unsuspecting." *United States* v. *Feola*, 420 U.S. 671, 685 (1975).

Jurisdictional language rarely doubles as an aspect of the culpability requirement in federal criminal statutes in the absence of an express indication of congressional intent. This Court and the courts of appeals have construed a variety of federal statutes as not requiring proof of knowledge of the facts supporting federal jurisdiction. Congress gave no indication that it intended a departure from this pattern when it enacted Section 1001.

ARGUMENT

PROOF THAT A DEFENDANT KNEW HIS FALSE STATEMENT WAS IN A MATTER WITHIN THE JURISDICTION OF A FEDERAL AGENCY IS NOT REQUIRED UNDER 18 U.S.C. 1001

The question presented by this case is whether, in a prosecution for making a false statement in violation of 18 U.S.C. 1001, the government must prove that the defendant knew that his statement was made "in [a] matter within the jurisdiction of [a] department or agency of the United States." Every court of appeals that has considered the issue, with the exception of the court of appeals in this case, has held that knowledge that a false statement is in a matter within federal agency jurisdiction is not an element of a Section 1001 offense. *United States* v. *Baker*, 626 F.2d 512 (5th Cir. 1980); *United States* v. *Stanford*, 589 F.2d 285 (7th Cir. 1978), cert. denied, 440 U.S. 983 (1979); *United States* v. *Lewis*, 587 F.2d 854 (6th Cir. 1978) (per curiam).[5] The

[5] The court of appeals in this case listed the elements generally considered necessary for a conviction under Section 1001: (1) a statement; (2) falsity; (3) specific intent; (4) materiality; and (5) agency jurisdiction (Pet. App. 2a-

court of appeals in this case disagreed, holding that a defendant cannot be convicted under Section 1001 unless the government establishes beyond a reasonable doubt not only that the defendant's statement was made in a matter within federal agency jurisdiction and that the defendant knew the statement was false, but also that the defendant knew of the facts giving rise to federal jurisdiction.

The court of appeals' reading of Section 1001 would undercut Congress's purpose of affording broad protection of federal functions and funds from fraud. If an individual could evade prosecution by claiming that he did not realize his false statements were in a matter within federal agency jurisdiction, it would often be difficult—and in some cases impossible—for the government to prosecute when false statements are not made directly to the government, but reach it through an intermediary, such as a state or local agency or, as in this case, a private employer.

It is apparent from the statutory language and the legislative history that Congress did not intend such a result. Consideration of the purposes generally served by culpability requirements, on the one hand, and by jurisdictional criteria, on the other, reinforces the conclusion that the government is not required to prove knowledge of federal involvement in order to establish a violation of Section 1001.

3a n.2, citing *United States* v. *Rose*, 570 F.2d 1358, 1363 (9th Cir. 1978)).

In some Section 1001 cases, courts have noted that the evidence indicated that a defendant knew of federal involvement. However, these cases do not hold squarely that such knowledge is an essential element of the violation. See cases cited at note 2, *supra*; *United States* v. *Lange*, 528 F.2d 1280, 1287 n.11 (5th Cir. 1976).

A. Section 1001 on Its Face Does Not Require Proof That a Defendant Knew His False Statement Concerned a Matter Within Federal Agency Jurisdiction

1. The starting point for interpretation of a statute is the language of the statute itself. *United States* v. *Turkette*, 452 U.S. 576, 580 (1981); *Rubin* v. *United States*, 449 U.S. 424, 429-431 & n.8 (1981); *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Section 1001 provides that "[w]hoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes any false, fictitious or fraudulent statements or representations * * * shall be fined not more than $10,000 or imprisoned not more than five years, or both."

This language makes it clear that a false statement must be made in a matter within the jurisdiction of a federal department or agency in order to fall within the prohibition of the statute. See, *e.g.*, *Bryson* v. *United States*, 396 U.S. 64, 70 (1969); *United States* v. *Kraude*, 467 F.2d 37, 38 (9th Cir.), cert. denied, 409 U.S. 1076 (1972); *Lowe* v. *United States*, 141 F.2d 1005, 1006 (5th Cir. 1944). But because Section 1001 refers broadly to "any" matter within federal agency jurisdiction, the courts of appeals have properly concluded that a statement need not be made directly to the federal government in order to fall within its proscription. See, *e.g.*, *United States* v. *Hooper*, 596 F.2d 219, 222-223 (7th Cir. 1979); *United States* v. *Candella*, 487 F.2d 1223, 1227 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974); *United States* v. *Matanky*, 482 F.2d 1319, 1322 (9th Cir.), cert. denied, 414 U.S. 1039 (1973);

United States v. *Waters*, 457 F.2d 805 (3d Cir. 1972) (per curiam); *Ebeling* v. *United States*, 248 F.2d 429 (8th Cir.), cert. denied, 355 U.S. 907 (1957). A false statement is "in [a] matter within the jurisdiction" of a federal agency if it is to be used in such a matter, whether or not it passes through an intermediary before it reaches the government. See, *e.g.*, *United States* v. *Candella*, 487 F.2d at 1227. Here, respondent acknowledges that his statements concerning his criminal record and prior employment (which were to be used in determining whether he should receive a government security clearance) were in a matter within the jurisdiction of the Department of Defense. See Pet. App. 3a.

It is also clear from the language of the statute that in order to violate Section 1001 the defendant must make a false statement "knowingly and willfully," *i.e.*, he must know his statement is false at the time he makes it. See, *e.g.*, *Bryson* v. *United States*, 396 U.S. at 69-70; *United States* v. *Lange*, 528 F.2d 1280, 1288-1289 (5th Cir. 1976). Respondent admits that he knew his statements about his criminal record and prior employment were false when he made them. See Pet. App. 3a.[6]

The plain language of Section 1001 does not impose any additional requirement that a defendant be aware that his statement is in a matter within the

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[6] Some courts have suggested that actual knowledge of falsity is not necessary, but that it is sufficient if the defendant spoke with reckless disregard of the truth or with a conscious purpose to avoid learning the truth. See *United States* v. *Egenberg*, 441 F.2d 441, 444 (2d Cir.), cert. denied, 404 U.S. 994 (1971); *United States* v. *Clearfield*, 358 F. Supp. 564, 574 (E.D. Pa. 1973).

jurisdiction of a federal agency.[7] As the Sixth Circuit has noted, "the language of Section 1001 does not require * * * specific proof that the person committing the fraud did so with the knowledge that the fraudulent statement would affect federal funds." *United States* v. *Lewis*, 587 F.2d at 857. No such "unexpressed requirement" (*ibid.*) appears on the face of the "in any matter" phrase, which is worded in terms of a straightforward description of facts necessary to support federal jurisdiction, rather than as a culpability requirement.

Congress could have chosen to draft the statute to begin with the words "[w]hoever, *with intent to deceive the United States* * * *"—language that would have directly supported the court of appeals' holding here. Alternatively, it could have begun with the phrase "[w]hoever, *knowing the statement is made* in any matter within the jurisdiction of any department or agency of the United States * * *." Indeed, had Congress intended the result reached below, such wording would have been a natural choice in view of its use of that very construction later in Section 1001, when it referred to making or use of a false writing or document "knowing the same to contain any false, fictitious or fraudulent statement or entry * * *." The fact that Congress did not word the "in any matter" phrase in this manner or use other language ap-

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[7] In *Morissette* v. *United States*, 342 U.S. 246, 263 (1952), the Court noted that "mere omission * * * of intent [in the statute] will not be construed as eliminating that element from the crimes denounced." Here the statute includes the words "knowingly and willfully" and therefore is not silent on the subject of intent. The question is whether the words "knowingly and willfully" should be read to apply to more than the making of a false statement, *i.e.*, whether they extend also to the existence of facts supporting federal jurisdiction.

propriate to the purpose is evidence that it did not intend to make knowledge of federal involvement an element of the Section 1001 offense.

Moreover, a natural reading of Section 1001 does not permit the importation of an unexpressed requirement of knowledge of federal involvement. The placement of the "in any matter" language as an introductory phrase makes it stand separately, as a specification of facts necessary to support federal jurisdiction, rather than serving double duty as an added feature of the culpability requirement. It seems clear that most readers would conclude that the adverbs "knowingly and willfully" modify the verbs and objects that follow, not the phrase that precedes them.

2. Despite the apparent clarity of the statutory language, the court of appeals characterized Section 1001 as "ambiguous" on this point (Pet. App. 6a). The court concluded (*id.* at 6a-7a) that the placement of the "in any matter" language before (rather than after) the words "knowingly and willfully" must be discounted because the order of the phrases originally had been reversed. The phrases were placed in their present order at the time the criminal code was recodified in 1948. As the court of appeals pointed out (*id.* at 7a), the 1948 revision was not meant to be a "substantive change" (see *United States* v. *Bramblett*, 348 U.S. 503, 508 (1955)).

But the fact that Congress did not originally place the "in any matter" phrase at the beginning of the false statement provision does not suggest that the structure of the statute is without significance, or that the "in any matter" language might double as a feature of the culpability requirement. Even as worded prior to codification, the most natural reading of the statute is inconsistent with the court of

appeals' holding. The language in question first appeared in the statute with the passage of the Act of June 18, 1934, ch. 587, 48 Stat. 996.[8] In the 1934 Act, Congress placed the "in any matter" phrase at the very end of the false statement provision, far removed from the "knowingly and willfully" language. In addition, the "in any matter" phrase was separated by a comma from the remainder of the statute.[9] Thus, the original structure of the statute itself suggests that the "in any matter" phrase was not part of the culpability requirement. While the original wording of Section 1001 may not have the crystal clarity of the current version, the construction for which we contend thus is the most natural and logical reading for both versions.[10]

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[8] The 1934 Act stated in pertinent part (48 Stat. 996-997):

> [W]hoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device, a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States is a stockholder; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

[9] The comma separating the "in any matter" language from the rest of the false statement provision was removed in 1938 when the statute was divided into subsections. Act of Apr. 4, 1938, ch. 69, 52 Stat. 197. However, no substantive change was made in the false statement provision at that time either. See *United States* v. *Bramblett*, 348 U.S. at 508 n.8. Removal of the comma thus appears to have been accidental. Cf. *United States* v. *Bass*, 404 U.S. 336, 340 n.6 (1971).

[10] The purpose of the 1948 recodification was generally to prune verbose phrases, rewrite ambiguous terms, and eliminate

B. Interpretation of Section 1001 to Include an Unexpressed Requirement That a Defendant Knew His False Statement Concerned a Matter Within the Jurisdiction of a Federal Agency Would Be Inconsistent With the Underlying Legislative Purpose

In *United States* v. *Feola*, 420 U.S. 671 (1975), the Court concluded that Congress did not intend to require proof that a defendant charged with violating the federal assault statute, 18 U.S.C. 111, knew that the victim of the assault was a federal officer. The Court reasoned that "in order to effectuate the congressional purpose of according maximum protection to federal officers by making prosecution for assaults upon them cognizable in the federal courts, § 111 cannot be construed as embodying an unexpressed requirement that an assailant be aware that his victim is a federal officer." 420 U.S. at 684. Analysis of the legislative purpose underlying Section 1001 likewise indicates that Congress did not require proof that a defendant knew of the facts supporting federal jurisdiction in order to establish an offense under that statute.

1. This Court has consistently recognized that Congress's purpose in extending Section 1001 to its current scope was to afford broad protection from

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archaic expressions. See H.R. Rep. 304, 80th Cong., 1st Sess. 8 (1947). Thus, to the extent the 1934 Act might have been read to suggest that culpability depended on knowledge of federal involvement, the reorganization of the statutory language can properly be regarded as an attempt to clarify Congress's original intention that the "in any matter" phrase serve simply as the predicate for federal jurisdiction. This understanding of congressional intent is consistent with the manner in which courts have construed such jurisdictional language in other federal criminal statutes. See pages 37-40, *infra*.

the harm to federal functions that could result from false statements. The Court explained in *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941), that the 1934 amendment to the federal false statement statute "indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described." The Court went on to hold that the statute is not confined to false statements that result in a pecuniary or property loss to the government. In *United States* v. *Bramblett*, 348 U.S. at 507, the Court, in holding that the statute reaches false statements made in connection with claims submitted to the legislative branch, admonished that "[t]here is no indication in either the committee reports or in the congressional debates that the scope of the statute was to be in any way restricted." Most recently, in *Bryson* v. *United States*, 396 U.S. 64 (1969), the Court held that Section 1001 would reach false statements made in affidavits submitted to a federal agency, even if the agency could not constitutionally require submission of the information. The Court stressed that "there is a valid legislative interest in protecting the integrity of official inquiries" and that the term "jurisdiction" therefore "should not be given a narrow or technical meaning for purposes of § 1001." 396 U.S. at 70 (citations omitted). The Court in *Bryson* explained that its holding in *Gilliland* was "based on the Court's concern that the statute be given a broad reading in order to protect the Government" from deceptive practices. 396 U.S. at 70 n.9.

Congress's broad purpose in enacting Section 1001 leaves little room for a restrictive interpretation of the statute that would cut back significantly on the

protection it provides for federal functions. Here, as in *Feola*, construction of the statute to include an unexpressed requirement that a defendant be aware of the facts supporting federal jurisdiction would undermine the legislative purpose. That is because, "[i]n furthering [the purposes of protecting federal funds and functions from fraudulent interference], it is irrelevant whether defendant knew that his intentionally false statements might eventually influence a federal agency." *United States* v. *Baker*, 626 F.2d at 516. Fraud that can cause federal agencies to take action "results in the perversion of the authorized functions of these agencies, whether or not the defendants * * * were aware of the agency involvement." *United States* v. *Stanford*, 589 F.2d at 297-298.

There can be no doubt that the construction of Section 1001 favored by the court below would interfere seriously with the protection of federal funds and functions. Requiring proof beyond a reasonable doubt, not only that a defendant knew his statement was false, but also that he knew it was made in a matter within federal agency jurisdiction, would diminish significantly the government's ability to obtain convictions in many cases in which false statements have the potential to do significant damage to federal operations. Much information that is not transmitted directly to the federal government nevertheless is capable of affecting federal functions because it ultimately is used in connection with a federal program. For example, many federal benefit programs, including those relating to public welfare, medical care, employment training, and housing, are administered primarily through state, local, or private agencies. Potential contractors under, or bene-

ficiaries of, such programs normally do not submit applications, claims, or other information directly to the federal government; rather, they deal with intermediary individuals or agencies, which use the information to award contracts or to determine eligibility and extent of federal benefits that will be paid.[11] Subcontractors on government contracts normally submit to the prime contractor statements concerning prices, costs, and performance standards; that information forms a basis for the prime contractors to recover payments from the government and to certify the completion of work in accordance with contract specifications.[12] Sellers of a commodity subject to a government pricing program may provide certifications to purchasers; the information is then used to classify the commodity for allocation and pricing purposes under federal guidelines.[13] And, as in this

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[11] See, *e.g.*, *United States* v. *Baker*, *supra* (public housing); *United States* v. *Candella*, *supra* (federally funded urban renewal program); *United States* v. *Stanford*, *supra* (welfare benefits); *United States* v. *Lewis*, *supra* (same); *United States* v. *Cella*, *supra* (medical benefits); *United States* v. *Matanky*, *supra* (same); *United States* v. *Kraude*, *supra* (same); *United States* v. *Hooper*, *supra* (Upward Bound Program); *United States* v. *Markee*, 425 F.2d 1043 (9th Cir.), cert. denied, 400 U.S. 847 (1970) (FHA insurance); *United States* v. *Mellon*, 96 F.2d 462 (2d Cir.), cert. denied, 304 U.S. 586 (1938) (same).

[12] See, *e.g.*, *United States* v. *Balk*, 706 F.2d 1056 (9th Cir. 1983); *United States* v. *Bass*, 472 F.2d 207 (8th Cir.), cert. denied, 412 U.S. 928 (1973); *Ebeling* v. *United States*, *supra*; 32 C.F.R. XXIII (subcontracting policies and procedures).

[13] See, *e.g.*, *United States* v. *Wolf*, 645 F.2d 23 (10th Cir. 1981) (mandatory petroleum allocation program).

case,[14] private contractors engaged in defense, atomic energy, or other specialized work for the government obtain information from their employees and forward it to the federal government, which conducts security investigations and grants security clearances on the basis of the information provided.

In each of these situations, false statements that are not submitted directly to the government have the capacity to interfere seriously with the integrity of a federal program: they can induce the payment of federal funds not authorized by statute (*e.g.*, *United States* v. *Stanford*, *supra* (AFDC benefits and food stamps)); endanger the public safety and national defense by causing the armed forces to use defective parts (*e.g.*, *United States* v. *Balk*, 706 F.2d 1056 (9th Cir. 1983) (subcontractor submitted falsified documents certifying that welding work met Navy specifications)); or threaten public health and safety by leading federally regulated nuclear power plants to incorporate substandard materials (*e.g.*, *United States* v. *Green*, No. 83-1107 (9th Cir. argued Nov. 16, 1983)). As in this case, false statements could endanger national security by inducing the grant of a security clearance to an individual who should not have access to sensitive defense information.

Construction of Section 1001 to require proof that a defendant knew his false statements were in a matter within federal agency jurisdiction would make it impossible to obtain convictions in many of these cases, even when it is likely that a defendant had

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[14] See also *Ogden* v. *United States*, 303 F.2d 724 (9th Cir. 1962); *Pitts* v. *United States*, 263 F.2d 353 (9th Cir.), cert. denied, 360 U.S. 919 (1959); *United States* v. *Giarraputo*, 140 F. Supp. 831 (E.D.N.Y. 1956).

such knowledge. A jury may be able to infer from surrounding circumstances that a defendant knew his statement was false at the time he made it. But awareness of federal involvement in a given situation is often peculiarly within the knowledge of the defendant; when a false statement is not submitted directly to a federal agency, such awareness cannot be inferred simply from the making of the statement. Even in a case like this one, in which a form gives clear notice that statements will be submitted to a federal agency, the defendant may assert that he did not take the time to read the notice. Here the form was captioned "Department of Defense Personnel Security Questionnaire," and a large warning over respondent's signature explained that false statements could result in prosecution under Section 1001. See J.A. 29, 33, 34, 38. Nevertheless, respondent claimed that he failed to notice either the caption or the warning, and the government was unable to provide direct evidence to the contrary. The court below compounded the difficulties of proof by holding (Pet. App. 14a-15a) that the government could not satisfy its burden of proof by showing that under the particular circumstances a reasonable person should have known that a statement was in a matter within the jurisdiction of a federal agency; instead, the government must establish beyond a reasonable doubt that a defendant had actual subjective knowledge of federal involvement. In many cases, such proof will be impossible, even though the potential for harm to federal functions is clear.[15]

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[15] We do not suggest that knowledge of federal involvement has no relevance whatsoever to proof of a Section 1001 offense. As the court of appeals noted in *Stanford*, "knowledge of federal involvement may be one circumstance to be considered in assessing the potential threat the statement may be to the

2. The court of appeals purported to recognize (Pet. App. 12a) that the purpose of Section 1001 is to protect federal funds and functions from fraud. In addition, it did not attempt to rebut the proposition that false statements can interfere seriously with federal functions even when a defendant was unaware of federal involvement. But the court of appeals inexplicably concluded (Pet. App. 12a-13a) that a defendant's knowledge of federal involvement is "entirely relevant" to the proper effectuation of congressional goals.

In support of its conclusion, the court of appeals relied on scattered excerpts from the legislative history. The court acknowledged that the materials on which it based its interpretation were "perhaps not entirely conclusive" (Pet. App. 7a). But that characterization is far too charitable. In fact, there is no mention in the legislative history of any requirement that the government prove that a defendant knew his statements were made in a matter within federal agency jurisdiction. Rather, the legislative history supports this Court's conclusion (see pages 18-19, *supra*) that Congress enacted an expansive statute that would give broad protection to federal functions. In addition, it indicates that Congress rejected language that would have required a showing of intent to deceive the government—the functional equivalent of the knowledge requirement imposed here by the court of appeals. The statements the court of appeals found to be significant are in fact either irrelevant

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proper functioning of the federal agency involved" (589 F.2d at 297). Cf. also *United States* v. *Feola*, 420 U.S. at 686. But this is very different from requiring proof of knowledge of federal involvement beyond a reasonable doubt as a separate element of a Section 1001 offense.

or addressed to more restrictive versions of the proposed legislation, which ultimately were rejected in favor of the current language of Section 1001. In short, there is no suggestion in the legislative history that Congress acted to restrict the protection afforded to federal functions under Section 1001 by imposing, sub silentio, a requirement that the prosecution prove beyond a reasonable doubt that a defendant was aware of federal involvement when he made a false statement.

a. Congress extended the federal false statement statute to its present scope in 1934. That amendment unquestionably was designed to broaden the statute in response to the federal government's increasing needs for protection from fraud.[16] The original statute, the Act of Mar. 2, 1863, ch. 67, 12 Stat. 696, was enacted in "the wake of a spate of frauds" upon the government (*United States* v. *Bramblett*, 348 U.S. at 504); it applied only to false statements made for the purpose of obtaining payment of a claim upon the United States. In 1918, Congress added a proscription on false statements made "for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States * * *." Act of Oct. 23, 1918, ch. 194, 40 Stat. 1015.[17]

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[16] The Court reviewed the history of the federal false statement statute in *United States* v. *Bramblett*, 348 U.S. at 504-508.

[17] Following the 1918 amendment, the federal false statement statute (then Section 35 of the Criminal Code) provided:

> * * * [W]hoever, for the purpose of obtaining or aiding to obtain the payment or approval of [a] claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any

Congress intended the 1918 amendment to broaden the scope of the false statement statute. See *United States* v. *Gilliland*, 312 U.S. at 93. However, in *United States* v. *Cohn*, 270 U.S. 339 (1926), the Court construed the phrase "defrauding the Government of the United States" as limited to "fraudulent[ly] causing * * * [a] pecuniary or property loss" to the federal government. *Id.* at 346-347. In part because of the *Cohn* decision, federal agencies found that the false statement statute was inadequate to meet their needs. See *Gilliland*, 312 U.S. at 93. The restricted scope of the statute became a particularly serious problem with the advent of New Deal programs in the 1930s. Early in 1934 the Secretary of the Interior submitted to the Senate Committee on the Judiciary draft legislation designed to address several specific situations in which submission of false reports was creating difficulties under certain federal programs. See S. Rep. 288, 73d Cong., 2d Sess. 1-2 (1934).[18] The Secretary noted that "[a] large number of cases [involving presentation of false written instruments] are arising constantly in the enforcement of the laws relating to the Interior

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department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

[18] The Court recounted the legislative history of the 1934 amendment in *Gilliland*, 312 U.S. at 92-95.

Department; the transaction of business in connection with the Public Works Administration; in violations of the Code of Fair Competition for the Petroleum Industry; and enforcement of regulations under section 9(c) of the National Industrial Recovery Act of June 16, 1933." S. Rep. 288, *supra*, at 1. The Secretary informed Congress that the new legislation was necessary because neither the perjury statutes nor any other law would reach such cases (*ibid.*).

Congress failed in its first effort to expand the false statement statute in 1934. The Senate broadened the scope of the proposed legislation by striking out the references to individual agencies and replacing them with the words "any department or agency of the United States," so that the bill imposed penalties on persons "who knowingly and willfully" made false documents "pertaining to any other matter within the jurisdiction of any department or agency of the United States." 78 Cong. Rec. 2858 (1934). But the House of Representatives subsequently narrowed the legislation by adding the requirement that a false instrument be made "with intent to defraud the United States." H.R. Rep. 829, 73d Cong., 2d Sess. 2 (1934). The House version was adopted, but President Roosevelt refused to sign the legislation. In a message to Congress, he explained that existing law already covered the offenses described in the new legislation and in fact prescribed greater penalties for them. 78 Cong. Rec. 6778-6779 (1934).

Within a few months the Senate Committee on the Judiciary reported another bill that included an amendment to the false statement statute. S. Rep. 1202, 73d Cong., 2d Sess. (1934).[19] The proposed

[19] The new amendment was attached to a bill providing for penalties for destruction of certain types of federal property.

amendment deleted from the existing statute the phrase "for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States" (40 Stat. 1015) and replaced it with the words "in any matter within the jurisdiction of any department or agency of the United States" (78 Cong. Rec. 11270-11271 (1934)). Both Houses passed the bill, and the President signed it into law. 78 Cong. Rec. 11271, 11513, 12452 (1934).

On its face the new language broadened the false statement statute considerably. The statute no longer required that a false statement be made with the "intent of cheating and swindling or defrauding" the government. Instead, it prescribed penalties for false statements made in matters within federal agency jurisdiction, with no requirement of intent to defraud or deceive the government.[20]

It is particularly significant that Congress chose not to use the phrase "intent to defraud the government"

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[20] The "in any matter" language clearly does not have the same meaning as the "intent to defraud the government" phrase. The "in any matter" language "compensated" for the deleted "intent to defraud" phrase only in the sense that it indicated that "not all falsifications but only those made to government organs were reached" (*Bramblett*, 348 U.S. at 508). In using these words to describe the 1934 change, the Court in *Bramblett* presumably did not mean that false statements must be made directly to a federal agency in order to come within Section 1001. Even at the time *Bramblett* was decided, the lower courts had ruled that a statement need not be made to the federal government itself in order to be covered by the statute. See, *e.g.*, *United States* v. *Mellon*, 96 F.2d at 463; *United States* v. *Catamore Jewelry Co.*, 124 F. Supp. 846, 848 (D.R.I. 1954); *United States* v. *Ganz*, 48 F. Supp. 323, 325 (D. Mass. 1942).

or "intent to deceive the government"—the effect of which would indeed have been to require knowledge that the statement was being made to the government. The earlier statute included both the "knowingly and willfully" language and the "intent to defraud the government" phrase. Congress again used both sets of words when it passed the first bill in its effort to expand the false statement statute in 1934. Following President Roosevelt's veto of that bill, accompanied by the message that the legislation did not succeed in expanding the coverage of existing law, Congress must have drafted the new amendment with considerable care. Had it intended to limit the amended statute to situations in which the maker of a false statement knew about federal involvement, while at the same time removing the limitation to cases of pecuniary or property loss, Congress surely would have used not only the words "knowingly and willfully," but also some variation on the "intent to defraud" phrase, *e.g.*, "intent to deceive the Government of the United States." See *Gilliland*, 312 U.S. at 94 (noting omission of the "limiting words" in the enacted version of the 1934 amendment).[21] Where Congress includes limiting language in an early version of a bill, but deletes it from the version of the legislation that ultimately is enacted, it may be presumed that the limitation was not intended. *Arizona* v. *California*, 373 U.S. 546, 580 (1963); *Gilliland*, 312 U.S. at 94.

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[21] The Court in *Gilliland* focused on the removal of the restriction to cases of pecuniary or property loss to the government. But if this were all Congress had sought to achieve, it could merely have substituted "intent to deceive" for "intent to defraud." Instead, it removed any such references, leaving only the words "knowingly and willfully" to define the necessary culpability under the statute.

The background against which the 1934 amendment was passed also suggests that Congress in fact anticipated that the false statement statute would reach statements that were not made directly to the government, and whose makers might not be aware of federal involvement. The amendment was enacted in the midst of the New Deal and was at least in part a response to specific problems that had arisen in connection with New Deal programs. Some of these programs relied on broad delegations of authority to private groups, which were to perform functions essential to the federal statutory scheme. For example, under Section 3 of the National Industrial Recovery Act, local industry advisory committees composed of representatives of private businesses administered codes of fair competition under the general supervision of federal agencies. Act of June 16, 1933, ch. 90, 48 Stat. 196.[22] See *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495, 524 (1935). The industry advisory committees were responsible, inter alia, for gathering information and prescribing conduct on the basis of that information. See *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 179 (1940). Individuals who made false statements to such private groups could have claimed they were unaware that their statements were in a matter within federal agency jurisdiction, but the resulting harm to operation of the relevant programs would have been clear. Since the range of Congress's concerns clearly included protection of the integrity of the new programs, it is unlikely that Congress would have elected

[22] In addition, under Sections 2(a) and 201(a) of the NIRA, 48 Stat. 195, 200, the President was authorized to use state and local officers and employees in order to administer programs under the Act.

to exclude coverage of these statements in cases in which an individual claimed ignorance of the federal connection.[23]

b. The court of appeals suggested (Pet. App. 11a-12a) that various excerpts from the 1934 legislative history show that Congress meant to delete from the statute the requirement of fraudulent intent to cause pecuniary loss to the government, but not a requirement of knowledge that a false statement was made in a matter within federal agency jurisdiction. But several of the statements cited by the court of appeals —the two excerpts from H.R. Rep. 829, *supra*, and the statement of Representative McKeown—refer to the version of the legislation that contained the "intent to defraud the government" language, which never became law. These statements deserve little weight because they relate to a bill that indisputably would have required knowledge of federal involvement, but that was vetoed and thereafter reenacted deleting the language upon which such a requirement would have been predicated.

The court of appeals also referred to statements on the floor of the Senate to the effect that the new leg-

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[23] Indeed, the Secretary of the Interior specifically referred to the problem of submission of false written instruments in connection with enforcement of the code of fair competition for the petroleum industry when he forwarded the proposed legislation in 1934. S. Rep. 228, *supra*, at 1 (letter of Secretary Ickes). While he did not provide details, it seems likely that the Secretary was referring to both statements made to federal agencies and statements made to private groups charged with administration of the code, since, at the time the 1934 amendment was under consideration, the industry advisory committees for the petroleum industry were playing a large role in the federal efforts to regulate "hot oil" shipments and thereby stabilize the industry. See *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. at 171-185.

islation was directed at those who made false affidavits or certificates or submitted fictitious bids and to the fact that the 1934 amendment was expressly aimed at the presentation of false papers regarding "hot oil" and use of false wage certificates to obtain reimbursement from the Public Works Administration. The court believed that these situations were ones in which individuals would know their false statements were made in a federal matter and that Congress therefore must have intended to require proof of such knowledge as an element of the Section 1001 offense. But even if the court were correct that there would always be knowledge of federal involvement in the "hot oil" and wage certificate cases,[24] Congress nevertheless made the choice to expand the amendment beyond the agencies named in the original draft legislation offered by the Secretary of the Interior, so that it covered "any department or agency of the United States." Congress's express references to several of the more obvious applications of the 1934 amendment do not imply any intent to exclude other

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[24] In fact, the specific examples mentioned during congressional consideration of the legislation were not necessarily confined to situations in which the maker of the false statement would be aware of federal involvement. It is at least possible that, *e.g.*, a subcontractor would submit a fictitious bid to a contractor and claim that he did not realize that the bid was for a government project. See, *e.g.*, *Ebeling* v. *United States*, *supra*. There is no indication that Congress intended to exclude that class of fictitious bids from coverage under the 1934 amendment. As we explained at page 31, note 23, *supra*, private groups participated heavily in administration of the federal program under which "hot oil" shipments were regulated.

applications that would fall within the language of the statute. "The legislative history [of Section 1001] does not suggest that the purpose of the amendment was in any way intended to be confined to the specific situations which were mentioned." *United States* v. *McCue*, 301 F.2d 452, 454-455 (2d Cir.), cert. denied, 370 U.S. 939 (1962). See also *Gilliland*, 312 U.S. at 95 (provisions of the 1934 amendment "were not limited to § 9(c) of the National Industrial Recovery Act," but extended also to subsequently enacted statute and regulations); *United States* v. *Adler*, 380 F.2d 917, 922 (2d Cir.), cert. denied, 389 U.S. 1006 (1967) ("There is nothing to suggest * * * that Congress in enacting § 1001 intended to conserve the energies of only certain agencies").

To summarize, Congress, in enacting the 1934 amendment, said nothing that suggests an intent to require proof that a defendant knew his statement was in a matter within federal agency jurisdiction; in fact, the legislative history contains no reference whatsoever to such a requirement. Instead, Congress indicated that it wished to broaden the false statement statute to reach a very wide range of false statements, including new types of fraud that threatened to impair the growing range of federal programs emerging under the New Deal, and it chose not to include in the statute the requirement of an intent to deceive the government. In view of its broad legislative purpose, Congress must have intended to reach all willfully false statements made in matters within federal agency jurisdiction, regardless of whether the maker claims that he did not realize he was deceiving the federal government.

C. Construction of Section 1001 Not to Require Proof That a Defendant Knew His False Statement Was in a Matter Within Federal Agency Jurisdiction Is Consistent With the Purposes Generally Served by Culpability Requirements and by Jurisdictional Language

Our reading of Section 1001 is consistent with the purposes generally served by culpability requirements, on the one hand, and by jurisdictional language, on the other.

1. In general, culpability or scienter requirements —such as the requirement that an act be done knowingly and willfully—serve to distinguish blameworthy conduct from innocent conduct. Concepts such as "guilty knowledge" or "scienter" have always operated to "protect those who were not blameworthy in mind from conviction of infamous common-law crimes." *Morissette* v. *United States*, 342 U.S. 246, 252 (1952). See also, *e.g.*, *Lambert* v. *California*, 355 U.S. 225, 228-230 (1957).

Under Section 1001, the requirement that the government prove that the defendant knew his statement was false at the time he made it serves the purpose of separating blameworthy conduct from innocent conduct. Requiring such proof ensures that those who make false statements because of negligence or mistake will not be penalized. Individuals who make statements they know to be false cannot claim plausibly that they believed they were engaging in innocent conduct. Compare *United States* v. *Freed*, 401 U.S. 601, 609 (1971). Indeed, the making of a statement one knows to be false must be regarded as malum in se. There is thus no need for any additional culpability requirement—*i.e.*, proof that a defendant knew his false statement was in a matter within federal agency

jurisdiction—in order to ensure that Section 1001 reaches only blameworthy conduct.[25]

Moreover, at least in some circumstances, making a false statement may be a violation of state law, regardless of the identity of the victim. For example, in California an individual who makes a false statement in an application for employment might risk criminal penalties on the basis that he obtained (or attempted to obtain) monetary advantage through false pretenses. See Cal. Penal Code § 484 (West 1970) (theft, including theft by false pretenses); see also *id.* § 532 (false pretenses). All American jurisdictions have adopted statutes covering theft by false pretenses. See *Model Penal Code and Commentaries (Pt. II)*, § 223.3, at 180 & n.1 (1980); Pearce, *Theft by False Promises*, 101 U. Pa. L. Rev. 967 (1953).[26]

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[25] The court of appeals found it significant that under the federal perjury statute, 18 U.S.C. 1621, the defendant's making of an oath ensures that he knows his false statements could subject him to criminal prosecution (Pet. App. 13a n.14). But one who makes a false statement in virtually any context other than statements to family and friends must suspect that the statement might subject him to criminal prosecution, perhaps under a state false pretenses statute. See text *infra*. In any event, analogies to the perjury statute do not provide guidance with respect to congressional intent underlying Section 1001. After all, Congress amended the federal false statement statute in 1934 in part because it believed that the perjury statute could not be used to prosecute many false statements that were interfering seriously with federal functions. 78 Cong. Rec. 2858 (1934) (statement of Sen. Ashurst); 78 Cong. Rec. 2152 (1934) (letter of Secretary Ickes); H.R. Rep. 829, 73d Cong., 2d Sess. 1-2 (1934).

[26] The court of apeals suggested that this case was distinguishable from *Feola* because, "unlike making a false statement, committing an assault is a crime—even apart from the federal statute—in every state of the Union" (Pet. App. 14a

Thus, an individual who is unaware that his false statement is in a matter within federal agency jurisdiction nevertheless should be aware that he runs the risk of criminal penalties under state law.

Because it is inherently wrongful for an individual to make a statement he knows to be false and on which he knows the actions of others may depend, and because at least some such statements are subject to state criminal penalties, there is no danger that a defendant will be *unfairly* surprised if his conduct turns out to violate Section 1001. As in *Feola*, construction of the statute, in accordance with its language, to contain no requirement of knowledge of the facts supporting federal jurisdiction does not create any "snare for the unsuspecting" (420 U.S. at 685). Like the respondent in *Feola*, the defendant in a Section 1001 case "knows from the very outset that his planned course of conduct is wrongful. The situation is not one where legitimate conduct becomes unlawful solely because of the identity of the individual or agency affected. In a case of this kind the offender takes his victim as he finds him." 420 U.S. at 685. Thus, the respondent here, like the respondent in *Feola*, may

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n.14). Since all states have some form of false pretenses statute, the court of appeals' distinction of *Feola* rests on an incorrect premise. Although state statutes would not cover all possible false statements made in a private context, they clearly would reach a number of false statements, perhaps including those made by respondent in this case. To the extent respondent's false statements were made for the purpose of obtaining and keeping a job, he might be held to have committed the offense of theft by false pretenses if his employer had relied on the false representations in paying his salary. At the very least, an individual who makes a false statement to his employer must be aware that he is venturing close to the line that separates criminal from noncriminal conduct.

have been surprised to learn that the victim of his wrongful conduct was governmental, rather than private, but this would not suggest that his conduct may not be penalized under federal law.[27]

2. The fact that the "in any matter" phrase establishes the basis for federal jurisdiction to penalize false statements makes it especially unlikely that any culpability requirement attaches to that phrase. In most federal criminal statutes, the purpose of jurisdictional language is confined to providing the basis for jurisdiction of federal courts; such language does not normally double as a component of the mens rea required to violate the statute. Thus, the Senate Judiciary Committee has explained that the draft federal criminal code "states the general rule that proof of culpability is not required with respect to any fac-

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[27] Respondent suggested in the court of appeals that knowledge of federal involvement must be an element of a Section 1001 offense because otherwise the statute would reach "totally innocent, private acts" (Appellant's Br. 15). That suggestion is hardly credible. A statement that is made with the knowledge that it is false cannot be characterized as a "totally innocent" act. Moreover, not all false statements that eventually find their way to the federal government would constitute violations of Section 1001. In general, a false statement is "in any matter within the jurisdiction of a department or agency of the United States" only if the federal government has an "official and immediate" interest in the subject matter of the statement. *Ogden* v. *United States*, 303 F.2d at 743. Thus, if an individual gives false information to a neighbor, and the neighbor later communicates that information to a federal agency, there would be no Section 1001 violation, since the statement was not in a matter within agency jurisdiction at the time it was made. Cf. *Terry* v. *United States*, 131 F.2d 40 (8th Cir. 1942) (statement was not within the jurisdiction of a federal agency when at the time defendants made a false statement in a loan application they had no intent or obligation to obtain a federally insured loan).

tor which is solely a basis for Federal jurisdiction, for venue, or for grading. The rule is consistent with the trend of recent decisions interpreting existing criminal statutes, including both substantive offenses and conspiracy, as not requiring proof of *scienter* by a defendant as to the jurisdictional element contained therein." S. Rep. 97-307, 97th Cong., 1st Sess. 73 (1981) (footnote omitted).[28] See also *Model Penal Code* § 1.13(10) (Proposed Official Draft 1962) ("material elements" for culpability purposes exclude jurisdiction and grading).

In the great majority of cases, the courts have held that, where a federal statute is silent with respect to any requirement that a defendant be aware of jurisdictional facts, proof of such knowledge is not an element of the government's case. In addition to *Feola*, see, *e.g.*, *Barnes* v. *United States*, 412 U.S. 837, 847 (1973) (knowledge that checks were stolen from the mails, as opposed to knowledge that they were stolen, not required under 18 U.S.C. 1708); *United States* v. *Hamilton*, No. 83-2052 (7th Cir. Jan. 13, 1984), slip op. 5-6 (knowledge of federal interest in converted funds not required under 18 U.S.C. 665); *United States* v. *Bankston*, 603 F.2d 528, 532 (5th Cir. 1979) (knowledge that individual is crossing state lines not required under federal kidnapping statute, 18 U.S.C. 1201); *United States* v. *Peskin*, 527 F.2d 71, 78 (7th Cir. 1975), cert. denied, 429 U.S. 818 (1976) (knowledge of use of interstate facilities not required under Travel Act, 18 U.S.C. 1952); *United States* v. *Hobson*, 519 F.2d 765, 769 (9th Cir.), cert. denied, 423 U.S. 931 (1975) (knowledge that the escapee defendants aided had committed a federal crime and escaped

[28] The Committee cited as examples *United States* v. *Feola*, *supra*; *Barnes* v. *United States*, 412 U.S. 837, 847 (1973); and *United States* v. *LeFaivre*, 507 F.2d 1288, 1297 n.14 (4th Cir. 1974), cert. denied, 420 U.S. 1004 (1975).

from federal prison not required to establish that they were accessories after the fact under 18 U.S.C. 3); *United States* v. *Horton*, 503 F.2d 810, 813 (7th Cir. 1974) (knowledge that firearms had traveled in interstate commerce not required under 18 U.S.C. App. 1202(a)(1)); *United States* v. *White*, 451 F.2d 559 (6th Cir. 1971), cert. denied, 405 U.S. 1071 (1972) (knowledge that goods crossed state lines not required under 18 U.S.C. 2314); *United States* v. *Jennings*, 471 F.2d 1310, 1312 (2d Cir.), cert. denied, 411 U.S. 935 (1973) (knowledge that official bribed is a federal official not required under 18 U.S.C. 201(b)(1)); *United States* v. *Howey*, 427 F.2d 1017, 1018 (9th Cir. 1970) (knowledge of federal ownership of property not required under 18 U.S.C. 641); *United States* v. *Blassingame*, 427 F.2d 329, 330-331 (2d Cir. 1970), cert. denied, 402 U.S. 945 (1971) (knowledge that interstate communication is used not required under wire fraud statute, 18 U.S.C. 1343);[29] *United States*

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[29] *United States* v. *Blassingame* provides a good example of the reasoning courts employ in concluding that the government need not prove a defendant's knowledge of facts supporting federal jurisdiction (427 F.2d at 330):

> The statute does not condition guilt upon knowledge that interstate communication is used. The use of interstate communication is logically no part of the crime itself. It is included in the statute merely as a ground for federal jurisdiction. The essence of the crime is the fraudulent scheme itself. Nothing is added to the guilt of the violator of the statute by reason of his having used an interstate telephone to further his scheme. There is consequently no reason at all why guilt under the statute should hinge upon knowledge that interstate communication is used. If the wire employed is an interstate wire the requirements for federal jurisdiction are satisfied. It is wholly irrelevant to any purpose of the statute that the perpetrator of the fraud knows about the use of interstate communication.

v. *Licausi*, 413 F.2d 1118, 1121 (5th Cir. 1969), cert. denied, 396 U.S. 1006 (1970) (knowledge that money was stolen from federally insured bank not required under bank robbery statute, 18 U.S.C. 2113(c)); *Overton* v. *United States*, 405 F.2d 168, 169 (5th Cir. 1968) (knowledge of interstate transportation of stolen vehicle not required under 18 U.S.C. 2313); *Bibbins* v. *United States*, 400 F.2d 544 (9th Cir. 1968) (knowledge that automobile would cross state lines not required under 18 U.S.C. 2312); *United States* v. *Allegretti*, 340 F.2d 243, 247, modified on other grounds, 340 F.2d 254 (7th Cir. 1964), cert. denied, 381 U.S. 911 (1965) (knowledge that goods are stolen from an interstate shipment not required under 18 U.S.C. 659).[30]

There is no reason to assume that Congress intended in the case of Section 1001 to depart from the normal practice of using jurisdictional language merely for the purpose of providing the basis for federal court jurisdiction, not also as a supplement to the culpability element. Consideration of the purposes generally

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[30] Cf. *United States* v. *Grissom*, 645 F.2d 461 (5th Cir. 1981) (intent to defraud government in connection with concealment of mortgaged property required under 18 U.S.C. 658). The court in *Grissom* rested its reading of Section 658 on its perception that the language of the statute was ambiguous and that construction of the statute to extend to a sharecropper's attempt to defraud his landlord would upset the federal-state balance in regulation of the sharecropper-landlord relationship. See *United States* v. *Bass*, 404 U.S. 336, 349-350 (1971). The court in *Grissom* expressly distinguished 18 U.S.C. 658 from 18 U.S.C. 1001, noting, inter alia, that Section 1001 does not refer to an "intent to defraud" and that the interest of the federal government under Section 1001 does not turn on whether the intended victim of the fraud is a federal body.

served by culpability requirements and by jurisdictional language merely confirms what is apparent from the language of Section 1001 and its legislative purpose: a prosecutor who succeeds in proving the normal elements of a Section 1001 offense, as did the prosecutor in this case, is not required to go further and prove beyond a reasonable doubt the additional fact that the defendant knew his false statement was made in a matter within federal agency jurisdiction.[31]

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[31] If the Court should nevertheless conclude that knowledge of federal involvement is an element of a Section 1001 offense, it should reject the court of appeals' subjective standard for proof of knowledge. Requiring proof beyond a reasonable doubt of actual subjective knowledge places a particularly difficult burden of proof on the prosecution, since it will often be impossible for the prosecution to produce direct evidence of whether a defendant was aware of federal agency involvement in the face of the defendant's own self-serving testimony. Thus, the court of appeals' standard is clearly inconsistent with Congress's broad purpose of protecting federal functions. See pages 20-23, *supra*. At the very least, the prosecution should be permitted to prove that a defendant acted recklessly, in that he knew or should have known that his false statement was in a matter within federal agency jurisdiction. That test corresponds to the jury instruction given in this case. See J.A. 25.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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